

GOVERNMENT PROPOSED JURY INST. NO. 276

Consider Each Count Separately

A separate crime is charged in each count of the indictment. Each charge, and the evidence pertaining to it, should be considered separately by the jury. The fact that you may find [*the*] accused guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

Devitt, Blackmar, Wolff, and O'Malley, *Federal Jury Practice and Instructions, Civil and Criminal* (4th Ed. 1992), Section 12.12

July 1994

MULTIPLE COUNTS

GOVERNMENT PROPOSED JURY INST. NO. 277

Separate Consideration Of Multiple Counts

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

Manual of Model Jury Instructions for the Ninth Circuit (1992 Ed.), Section 3.09

GOVERNMENT PROPOSED JURY INST. NO. 278

Consider Each Count And Each Defendant Separately

A separate crime is alleged against [*each*][*one or more*] of the defendants in each count of the indictment. Each alleged offense, and any evidence pertaining to it, should be considered separately by the jury. The fact that you find one defendant guilty or not guilty of one of the offenses charged should not control your verdict as to any other offense charged against that defendant or any other defendant.

You must give separate and individual consideration to each charge against each defendant.

Devitt, Blackmar, Wolff, and O'Malley, *Federal Jury Practice and Instructions, Civil and Criminal* (4th Ed. 1992), Section 12.13

July 1994

MULTIPLE COUNTS & DEFS.

GOVERNMENT PROPOSED JURY INST. NO. 279

Separate Consideration Of
Each Count And Each Defendant

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant on each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

All of the instructions apply to each defendant and to each count (unless a specific instruction states that it applies only to [*a specific defendant*][or][*a specific count*]).

Manual of Model Criminal Jury Instructions for the Ninth Circuit (1992 Ed.), Section 3.11

GOVERNMENT PROPOSED JURY INST. NO. 280

Give Each Defendant Separate Consideration

It is your duty to give separate and personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual defendant leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his [her] case determined from evidence as to his [her] own acts, statements, and conduct and any other evidence in the case which may be applicable to him [her].

The fact that you return a verdict of guilty or not guilty to one defendant should not, in any way, affect your verdict regarding any other defendant.

Devitt, Blackmar, Wolff, and O'Malley, *Federal Jury Practice and Instructions, Civil and Criminal* (4th Ed. 1992), Section 12.14.

July 1994

MULTIPLE DEFS.

GOVERNMENT PROPOSED JURY INST. NO. 281

Separate Consideration For Each Defendant

Although the defendants are being tried jointly, you must give separate consideration to each defendant. In doing so you must analyze what the evidence in the case shows with respect to each defendant, leaving out of consideration any evidence admitted solely against some other defendant or defendants. Each defendant is entitled to have his case decided on the evidence and the law applicable to him.

Federal Criminal Jury Instructions of the Seventh Circuit (1980 Ed.), Section 3.11

GOVERNMENT PROPOSED JURY INST. NO. 282

Separate Consideration For Each Defendant

Although the defendants are being tried together, you must give separate consideration to each defendant. In doing so you must determine what the evidence in the case shows with respect to each defendant, leaving out of consideration any evidence admitted solely against some other defendant[s]. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendant[s].

Manual of Model Criminal Jury Instructions for the Ninth Circuit (1992 Ed.), Section 2.14

July 1994

SINGLE COUNT - SINGLE DEF.

GOVERNMENT PROPOSED JURY INST. NO. 283

Caution -- Punishment
(Single Defendant -- Single Count)

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged. The defendant is not on trial for any act, conduct, or offense not alleged in the indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case.

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1990 Ed.), General and Preliminary Instructions, Instruction No. 1.20, p. 31

GOVERNMENT PROPOSED JURY INST. NO. 284

Caution -- Punishment
(Single Defendant -- Single Count)

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not be a part of your consideration or discussions.

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1990 Ed.), General and Preliminary Instructions, Instruction No. 1.21, p. 32

July 1994

SINGLE DEF. - SINGLE COUNT

GOVERNMENT PROPOSED JURY INST. NO. 285

Caution -- Punishment
(Single Defendant -- Single Count)

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty. The defendant is on trial only for the specific offense alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the judge to determine.

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (1985 Ed.), Basic Instructions, Instruction No. 10.1, p. 25

GOVERNMENT PROPOSED JURY INST. NO. 286

Caution -- Punishment
(Single Defendant -- Multiple Counts)

A separate crime or offense is charged in each count of the indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1990 Ed.), General and Preliminary Instructions, Instruction No. 1.22, p. 33

July 1994

SINGLE DEF. - MULTIPLE COUNTS

GOVERNMENT PROPOSED JURY INST. NO. 287

Caution -- Punishment
(Single Defendant -- Multiple Counts)

A separate crime or offense is charged in each count of the indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not affect your verdict as to any other offense charged.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty. The defendant is on trial only for those specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the judge to determine.

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (1985 Ed.), Basic Instructions, Instruction No. 10.2, p. 26

GOVERNMENT PROPOSED JURY INST. NO. 288

Caution -- Punishment
(Multiple Defendants -- Single Count)

The case of each defendant and the evidence pertaining to him should be considered separately and individually. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendant.

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1990 Ed.), General and Preliminary Instructions, Instruction No. 1.23, p. 34

July 1994

MULTIPLE DEFS. - SINGLE COUNT

GOVERNMENT PROPOSED JURY INST. NO. 289

Caution -- Punishment
(Multiple Defendants -- Single Count)

The case of each defendant and the evidence pertaining to him should be considered separately and individually. The fact that you may find any one of the defendants guilty or not guilty should not affect your verdict as to any other defendant.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty. The defendant is on trial only for the specific offense alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the judge to determine.

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (1985 Ed.), Basic Instructions, Instruction No. 10.3, p. 27

GOVERNMENT PROPOSED JURY INST. NO. 290

Caution -- Punishment
(Multiple Defendants -- Multiple Counts)

A separate crime is charged against one or more of the defendants in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered separately. Also, the case of each defendant should be considered separately and individually. The fact that you may find one or more of the accused guilty or not guilty of any of the offenses charged should not control your verdict as to any other offense or any other defendant. You must give separate consideration as to each defendant.

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1990 Ed.), General and Preliminary Instructions, Instruction No. 1.24, p. 35

GOVERNMENT PROPOSED JURY INST. NO. 291

Caution -- Punishment
(Multiple Defendants -- Multiple Counts)

A separate crime or offense is charged against one or more of the defendants in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered separately. Also, the case of each defendant should be considered separately and individually. The fact that you may find one or more of the defendants guilty or not guilty of any of the offenses charged should not affect your verdict as to any other offense or any other defendant.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty. The defendant is on trial only for the specific offense alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the judge to determine.

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (1985 Ed.), Basic Instructions, Instruction No. 10.4, p. 28

GOVERNMENT PROPOSED JURY INST. NO. 292

"On Or About" -- Explained

The indictment charges that the offense alleged [*in Count* _____] was committed "on or about" a certain date.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in [*Count* ____ *of*] the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

Devitt, Blackmar, Wolff and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1992), Section 13.05

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1990 Ed.), Basic Instructions, Instruction No. 119, p. 30.

July 1994

ON OR ABOUT

GOVERNMENT PROPOSED JURY INST. NO. 293

Date Of Crime Charged

The indictment charges that the offense was committed "on or about" _____. Although the evidence need not establish with certainty the exact date of the alleged offense, it must establish that the offense was committed on a date reasonably near the date charged.

Federal Criminal Jury Instructions of the Seventh Circuit (1980 Ed.), Section 3.01

Devitt, Blackmar, Wolff and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1992), Section 13.05, Notes, p. 394.

GOVERNMENT PROPOSED JURY INST. NO. 294

Each Tax Year is Separate

Any willful failure to comply with the requirements of the Internal Revenue Code for one year is a separate matter from any such failure to comply for a different year. The tax obligations of the defendant in any one year must be determined separately from the tax obligations in any other year.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.24

July 1994

TAX DEFICIENCY

GOVERNMENT PROPOSED JURY INST. NO. 295

Proof of Precise Amount of Tax Owed Not Necessary

The government must prove beyond a reasonable doubt that the defendant _____ willfully attempted to evade or defeat a substantial portion of the tax owed.

Although the government must prove a willful attempt to evade a substantial portion of tax, the government is not required to prove the precise amount of additional tax alleged in the indictment or the precise amount of [*additional*] tax owed.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.08

NO LOSS TO GOVT.

July 1994

GOVERNMENT PROPOSED JURY INST. NO. 296

Not Necessary to Show Any Additional Tax Due

Although the government is required to prove beyond a reasonable doubt that the defendant willfully filed a false document as charged in Count ____ of the indictment [*information*], the government is not required to prove that any additional tax was due to the government or that the government was deprived of any tax revenues by reason of any filing of any false return.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.19

GOVERNMENT PROPOSED JURY INST. NO. 297

Funds or Property From Unlawful Sources

There has been evidence in this case that the defendant received funds or property from unlawful sources.

In determining the issue of the taxable income of the defendant no distinction is made between income derived from lawful or unlawful sources. Funds or property received from unlawful or illegal sources, therefore, are treated in the same manner as funds or property from lawful or legal sources.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.21

26 U.S.C. § 61

James v. United States, 366 U.S. 213 (1961)

Rutkin v. United States, 343 U.S. 130 (1952)

GOVERNMENT PROPOSED JURY INST. NO. 298**Computation of Tax Deficiency**

The first step in arriving at an individual's taxable income is to determine the gross income of that individual. Gross income generally means all income from whatever source derived. Gross income includes, but is not limited to, compensation for services, such as wages, salaries, fees, or commissions, income derived from a trade or business, gains from dealings in property, interest, royalties, and dividends. Gross income includes both lawful and unlawful earnings.

After having determined an individual's gross income, the next step in arriving at the income upon which the tax is imposed is to subtract from the gross income such deductions and losses as the law provides. In this connection, an individual is permitted to deduct from gross income all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business or other profit-seeking endeavors, to the extent those expenses are not reimbursed by the business.

The amount remaining after subtracting the allowable deductions and losses from gross income is termed "adjusted gross income." In arriving at income upon which the tax is imposed, the individual is permitted to deduct from adjusted gross income either the zero bracket amount allowed by law, or, in the alternative, amounts paid during the year for itemized deductions, which are limited by law, such as, medical expenses, state income and property taxes, interest, charitable contributions, and other miscellaneous items. An individual is then allowed a deduction for each qualified exemption. The resulting figure is termed "taxable income", that is to say, the sum on which the income tax is normally imposed.

26 U.S.C. §§ 61 through 223 (Corporations, 26 U.S.C. §§ 61 through 281)

GOVERNMENT PROPOSED JURY INST. NO. 299

Accrual Method of Accounting

Taxable income is computed by using the same method of accounting that the taxpayer used to compute his [her] income, as long as such accounting method clearly reflects income. In this case, the defendant reported taxable income and deductible expenses on the accrual method of accounting.

Under the accrual method of accounting, income is to be included in the taxable year when all events have occurred which fix the right to receive such income and the amount of the income can be determined with reasonable accuracy. Similarly, deductions are allowable for the taxable year in which all the events have occurred which establish the fact of liability giving rise to such deduction and the amount of the deduction can be determined with reasonable accuracy. When income is actually received or an expense is actually paid is irrelevant in the accrual method of accounting.

26 U.S.C. §§ 446, 461(a)

Treasury Regulations on Income Tax (1986 Code), Sec. 1.461-1(a)(2) (26 C.F.R.)

GOVERNMENT PROPOSED JURY INST. NO. 300

Corporate Diversions 1

Gains or profits and income derived from any source whatever are included in gross income for the purpose of taxation of income. This includes both lawful and unlawful gains.

You have heard evidence that the defendant was a stockholder in and received cash or other property from the [*insert name of corporation*], a corporation.

If you find that the defendant was a stockholder in the [*insert name of corporation*] and obtained cash or other property from the corporation, then you should proceed to determine whether this was income to the defendant.

In this connection, the question for you to determine is whether the defendant had complete control over the cash or other property he [she] obtained from the corporation, took it as his [her] own, and treated it as his [her] own, so that as a practical matter he [she] derived economic value from the money or property received. If you find this to be the case, then the money or property received by the defendant would be income; if you do not find this to be the case, then the money or property obtained by the defendant would not be income to the defendant.

United States v. Ruffin, 575 F.2d 346, 351 n.6 (2d Cir. 1978)

United States v. Miller, 545 F.2d 1204, 1214 n.12, 1215 (9th Cir. 1976), *cert. denied*, 420 U.S. 930 (1977)

United States v. Leonard, 524 F.2d 1076, 1082-1084 (2d Cir. 1975)

DiZenzo v. Commissioner Of Internal Revenue, 348 F.2d 122, 125-127 (2d Cir. 1965)

United States v. Goldberg, 330 F.2d 30, 38 (3d Cir.), *cert. denied*, 377 U.S. 953 (1964)

Hartman v. United States, 245 F.2d 349, 352-353 (8th Cir. 1957)

Davis v. United States, 226 F.2d 331, 334-335 (6th Cir. 1955), *cert. denied*, 350 U.S. 965 (1956)
Cf. United States v. Cruz, 698 F.2d 1148 (11th Cir. 1983)

NOTE

1 In the Second, Third, Sixth, Eighth, and Eleventh Circuits, this instruction should be adequate in those situations where the defendant has not introduced evidence to the effect that there were no corporate earnings or profits from which a dividend could have been paid. If the defense does introduce such evidence, an instruction should be given that explains the part that earnings and profits and capital gains treatment plays in determining whether, and to what extent, currency or property obtained from a corporation constitutes taxable income. For such an instruction, *see infra*. In the Ninth Circuit, this instruction may be adequate even in the face of evidence by the defense that there were no corporate earnings or profits from which a dividend could have been paid. *See United States v. Miller*, 545 F.2d 1204, 1214 n.12, 1215 (9th Cir. 1976), *cert. denied*, 420 U.S. 930 (1977).

In circuits other than the Second, Third, Sixth, Eighth, Ninth, and Eleventh, the law should be researched and a determination made as to whether the above instruction is adequate or whether it is necessary to give an instruction on earnings and profits even though no evidence is introduced by the defendant as to an absence of earnings or profits.

COMMENT

1 Depending on the evidence, an instruction regarding loans may be appropriate. *See infra* for an example of such an instruction.

GOVERNMENT PROPOSED JURY INST. NO. 302

Constructive Dividends 1

The government has introduced evidence to establish that the defendant was a stockholder in [*insert name of corporation*], a corporation, and [*e.g., obtained money or property from the corporation*] and/or [*caused the corporation to spend money for personal purposes of the defendant*] 2 which represented a [*dividend*] [*and/or capital gain income*] 3 that should have been reported on the defendant's return.

The defendant has introduced evidence to establish that [*describe defense, e.g., money (or property) obtained by the defendant from the corporation and expenditures made by the corporation for personal purposes of the defendant*] was not income to the defendant but [*e.g., a loan from the corporation or a nontaxable return of the defendant's investment in the corporation*]. 4

In determining whether the defendant received any income from his [her] corporation, you are instructed as follows:

1. ***Dividend.*** A distribution by a corporation to or for the benefit of a stockholder that is not a loan is reportable as a dividend to the extent that the distribution (or any part thereof) could have been paid out of the accumulated earnings and profits of the corporation; or out of the earnings and profits of the corporation for the taxable year in issue.

2. ***Return of Capital.*** If the accumulated and current earnings and profits of the corporation are not great enough in amount to account for all, or a part of, the distribution to the defendant, then that portion of the distribution which could not be paid out of earnings and profits would be a nontaxable return of capital up to the amount of money invested in the corporation by the defendant.

3. ***Capital Gain Income.*** Finally, any portion of the distribution which exceeds both the accumulated earnings and profits of the corporation and the amount the defendant had invested in the corporation, would be capital gain income to the defendant.

[4. ***Loan.*** *If you find that a distribution received by the defendant (or any part thereof)*

was a loan from the corporation, which was to be repaid, then to the extent that the distribution was a loan, it would not be income to the defendant.] 5

United States v. Thetford, 676 F.2d 170, 175 n.5 (5th Cir. 1982), *cert. denied*, 459 U.S. 1148 (1983)

Bernstein v. United States, 234 F.2d 475, 480-482 (5th Cir.), *cert. denied*, 352 U.S. 915 (1956)

NOTES

1 This instruction should be given in those situations where the defendant has introduced evidence to the effect that there were corporate earnings or profits from which a dividend could have been paid. Where the defendant has not introduced such evidence, the instruction on corporate diversions, *supra*, may be given.

2 Select language and alternatives that reflect the evidence introduced by the government.

3 Select language and alternatives that reflect the evidence introduced by the government.

4 If the defense evidence is to the effect that the defendant received no money or property from the corporation and no expenditures were made for personal purposes of the defendant, this portion of the instruction should be modified accordingly.

5 This portion of the instruction is to cover those situations where evidence has been introduced of a loan defense. Another instruction concerning loans is set forth, *infra*.

GOVERNMENT PROPOSED JURY INST. NO. 304Loan -- Explained

A loan which the parties to the loan agree is to be repaid does not constitute gross income as that term is defined by the Internal Revenue Code. However, merely calling a transaction a loan is not sufficient to make it such. When money is acquired and there is no good faith intent on the part of the borrower to repay the funds advanced, such funds are income under the income tax laws and are taxable as such.

United States v. Swallow, 511 F.2d 514, 522 n.7 (10th Cir.), *cert. denied*, 423 U.S. 845 (1975)

See also ***United States v. Rosenthal***, 454 F.2d 1252 (2d Cir. 1972), *cert. denied*, 406 U.S. 931 (1972)

United States v. Rosenthal, 470 F.2d 837, 841-842 (2d Cir. 1972), *cert. denied*, 412 U.S. 909 (1973)

United States v. Rochelle, 384 F.2d 748, 751 (5th Cir. 1967), *cert. denied*, 390 U.S. 946 (1968)

GOVERNMENT PROPOSED JURY INST. NO. 305Gift -- Defined

It is for you, the jury, to decide whether certain funds are taxable or nontaxable as gifts to the defendant. In determining whether a payment of money or property to the defendant is a nontaxable gift, you should look to the intent of the parties at the time the payment was made, particularly the intent of the person making the payment.

A gift proceeds from a detached and disinterested generosity arising from affection, respect, admiration, charity, or like impulses. In this regard, the most critical consideration is the transferor's or donor's intention. What controls is the intention with which the payment, however voluntary, was made.

If a payment in funds or in property from one person to another proceeds primarily from a duty, either moral or legal, that payment is not a gift. Likewise, if the payment acts as an incentive for an anticipated benefit of an economic nature, then such payment is not a gift. Similarly, where the payment is in return for services rendered, it is not a gift. It does not matter whether the donor derives economic benefit from the payment.

Moreover, the donor's characterization of his [her] action is not conclusive. It is for you, the jury, to determine objectively whether what is called a gift is in reality a gift. Additionally, the parties' expectations or hopes as to the tax treatment of their conduct have nothing to do with the matter.

The decision as to whether individual payments are gifts or income [*or political contributions*] is a question of fact for you to determine in the light of practical human experience. If you find that a payment was a gift, as I have defined it, then that payment does not constitute income and need not be reported on an income tax return.

Commissioner v. Duberstein, 363 U.S. 278, 285-286 (1960)

GOVERNMENT PROPOSED JURY INST. NO. 306Gift -- Defined

It is for you, the jury, to decide whether certain funds are taxable or nontaxable as gifts to the defendant. In determining whether a payment of money or property to the defendant is a nontaxable gift, you should look to the intent of the parties at the time the payment was made, particularly the intent of the person making the payment.

A gift proceeds from a detached and disinterested generosity arising from affection, respect, admiration, charity, or like impulses. In this regard, the most critical consideration is the transferor's or donor's intention. What controls is the intention with which the payment, however voluntary, was made.

The characterization given to a certain payment by either the defendant or the person making the payment is not conclusive. Rather, you the members of the jury must make an objective inquiry as to whether a certain payment is a gift. You should look at the terms and substance of any request made by the defendant for the funds. In addition, you may take into account the following factors:

1. A payment is not a gift if it is made to compensate the defendant for his services. In this connection, you should consider how the defendant made his living.

2. A payment is not a gift if the person making the payment expects to receive anything in return for it. A payment would not be a gift if it was made with the expectation that it would allow the defendant to remain in business.

3. A payment is not a gift if the person making the payment felt he had a duty or obligation to make the payment.

4. A payment is not a gift if the person making the payment did so out of fear or intimidation.

[5. A payment is not a gift to the defendant if it is made with the expectation that it will be used to further the religious or ministerial activities of the defendant.] 1

This is not a complete listing of all the factors you should consider. You should take into account all the facts and circumstances of this case in determining whether any payment was a gift.

United States v. Terrell, 754 F.2d 1139, 1149 n.3 (5th Cir.), *cert. denied*, 472 U.S. 1029 (1985)

NOTE

1 This sentence is reproduced as it appears in the opinion but would appear to be incomplete. In its opinion, the court correctly states the law on this point as follows, *Terrell*, 754 F.2d at 1149:

If money is given to a minister for religious purposes, any money used instead for the personal benefit of the minister becomes taxable income to him.

July 1994

PARTNERSHIP INCOME

GOVERNMENT PROPOSED JURY INST. NO. 308

Partnership Income

A partnership as such is not subject to income tax. Instead, each partner is individually taxed on and must report his [her] share of the partnership income, even if the income is not actually distributed to the partners.

If the partnership incurs a loss, each partner can deduct his [her] share of the loss on that partner's individual return.

26 U.S.C. §§ 701, 702

GOVERNMENT PROPOSED JURY INST. NO. 309Partnership Losses

A partnership does not pay taxes. Its income or loss flows through to the individual partners. The loss which a partner is entitled to claim on his [her] tax return with respect to a partnership loss is limited to the amount of his [her] contribution to the partnership. A partner's contribution to the partnership includes the amount of money he [she] contributed to the partnership as well as his [her] proportionate share of the partnership's liabilities or debts.

In the present case, if you find that certain asserted partnership liabilities do not exist or are of lesser value than that asserted on the partnership tax return, then such claimed liability, or portion thereof, may not be included in determining a partner's contribution to the partnership.

On the other hand, if you find that liabilities in the amounts asserted by [*Name of partnership*] were in fact incurred, then each partner's contribution to the partnership would include his [her] proportionate share of such partnership liabilities in determining the amount of loss which each partner is entitled to claim on his [her] individual income tax return.

26 U.S.C. §§ 704(d), 722, & 752(a)

GOVERNMENT PROPOSED JURY INST. NO. 310Deductions

Generally, there is an inference that a taxpayer will claim all deductions allowed on his [her] return, and the deductions stated on the return are prima facie proof of the maximum deductible amounts to which the defendant is entitled. Accordingly, if the defendant asserts additional deductions other than those shown on the return, it is incumbent upon the defendant to introduce evidence with respect to such additional deductions. The government has no burden of proving deductions beyond those claimed on the return.

This instruction is based on Fed. R. Evid. Rule 801(d) and the rationale of the opinions below:

United States v. Link, 202 F.2d 592, 593-594 (3d Cir. 1953)

United States v. Lacob, 416 F.2d 756, 760 (7th Cir. 1969), *cert. denied*, 396 U.S. 1059 (1970)

United States v. Bender, 218 F.2d 869, 871-872 (7th Cir.), *cert. denied*, 349 U.S. 920 (1955)

Clark v. United States, 211 F.2d 100, 103 (8th Cir. 1954), *cert. denied*, 348 U.S. 911 (1955)

United States v. Marabelles, 724 F.2d 1374, 1383 (9th Cir. 1984)

Elwert v. United States, 231 F.2d 928, 933 (9th Cir. 1956)

GOVERNMENT PROPOSED JURY INST. NO. 311Overstatement of Lawful Deductions

An income tax return may be false, not only by reason of an understatement of income, but also because of an overstatement of lawful deductions.

The term "deduction" means any item allowed by the internal revenue laws to be subtracted from gross income, in computing the amount of net or taxable income for income tax purposes.

In this case, it is charged that the income tax return was false because of an alleged willful overstatement of the amount of the deductions allowed by the internal revenue laws.

A deduction from gross income is allowed by the internal revenue laws, within limits not pertinent here, for such charitable contributions as are actually paid by the taxpayer during the taxable year to religious, charitable, educational and similar non-profit organizations.

A deduction from gross income is also allowed by the internal revenue laws for certain taxes, including State, County, and City taxes.

The internal revenue laws also permit, within limits not pertinent here, a deduction from gross income for expenses actually paid during the taxable year, not compensated for by insurance or otherwise, for medical and dental care regardless of when the incident or event which occasioned the expense occurred.

Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), § 36.07

See *United States v. Helmsley*, 941 F2d 71, 92 (2nd Cir. 1991), *cert. denied*, 112 S.Ct. 1162 (1992)

